

CALIFORNIA STATE DEPARTMENT OF PUBLIC HEALTH

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WALTER M. DICKIE, M.D., Director

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LOS ANGELES
State Office Building, 217 West First
Street MADISON 1271

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GUY P. JONES
EDITOR

Disposal of Cremated Human Remains

In compliance with a request for an opinion relative to the proper disposal of cremated human remains in California, in accordance with the provisions of the Health and Safety Code, Attorney General Earl Warren has issued an opinion. The questions asked of the Attorney General and his opinion covering the matter follow:

"1. Is there now a limited time within which undertakers may store ashes in their own vaults?

2. Must ashes stored by undertakers in their own vaults before enactment of the Health and Safety Code be removed? If so, how soon?

3. Can cremated remains which have heretofore been removed to the private premises (home) of an individual for storage, be removed to another state or into another registration district without securing a burial or removal permit issued by local registrars of vital statistics? (Section 7055, Health and Safety Code)

4. Can ashes (cremated) be scattered on the ocean or any other place outside the incorporated limits of a city or city and county?

5. Does section 7054, Health and Safety Code, prohibit interment of human ashes except in a cemetery in a city or city and county?

In reply, section 8341 of the Health and Safety Code requires the interment in a plot, of all cremated human remains not removed for interment or other disposition elsewhere within a reasonable time following cremation.

It is a codification of former section 5 of the General Cemetery Act of 1931, which was prospective

rather than retrospective in operation. Though it suggests that reduced remains of a body may only be removed for interment, which term is defined in section 7009 of the Health and Safety Code as consisting of cremation, inurnment, entombment or burial in a cemetery (section 7003), other provisions of the Health and Safety Code, which are in *pari materia* therewith, suggest that such a strict construction was never contemplated by the legislature.

Section 7017 of the Health and Safety Code is a codification of section 24 of the General Cemetery Act of 1931, and defines a 'temporary receiving vault' as a 'vault used or intended to be used for the temporary placement of human remains.' Such a vault is not required to be in a cemetery, nor does it come within the definition thereof. As this section is found in Division VII of the Health and Safety Code, which relates to 'dead bodies,' it indicates that the legislature recognized that cremated human remains might be temporarily placed in vaults following their reduction to ashes.

The code does not indicate how long ashes may be stored or placed in vaults and you are therefore advised that, in lieu of any expressed limitation, persons lawfully in possession thereof, including undertakers, might keep cremated human remains for a reasonable time in contemplation of eventual disposition thereof. The questions as to what are reasonable and what are unreasonable periods of time are questions of fact which must be disposed of as they arise. It should be borne in mind that the statute can have no retrospective operation prior to 1931. What has just been stated is applicable to ashes stored after 1931 and before the enactment of the Health and Safety Code as well as to those ashes stored or kept

since the effective date of said code. (September 19, 1939.)

These sections must be read together with section 7500 of the Health and Safety Code.

The latter section permits the removal of cremated remains from a cemetery, which includes a columbarium, upon the written order of the health department having jurisdiction or of the superior court of the county in which the cemetery is situated. This section requires any person who removes any cremated remains from a cemetery to keep and maintain a true and correct record showing:

1. The date such remains were removed;
2. The name and age of the person removed, when these particulars can be conveniently obtained, and the place to which the remains were removed;
3. The cemetery and the plot therein in which such remains were buried.

The balance of such section requires a record to be kept of any disposition of the cremated remains other than by interment. This latter requirement must be read as a qualification of the third provision above noted. That is to say, that if the cremated remains are not buried in a plot in a cemetery, the person otherwise disposing of the same must keep a record of the method, manner and place of disposition thereof. Such person, according to the same section, must deliver to the cemetery authority operating the cemetery from which the remains were removed, a true, full and complete copy of such record.

What has hereinbefore been stated disposes of the second question asked by you.

Your third question as to whether cremated remains may hereafter be removed from private premises into another state or registration district without securing a removal permit is answered in the negative. This requirement is statistical in character and has for its purpose the location or tracing of a body to its last resting place or ashes to the place of their final disposition. It has no bearing on the protection of the public or of public welfare, save as indicated.

Whether cremated ashes may be scattered on the ocean or in unincorporated areas presents a question to which we have given great consideration.

The subject of cremation was considered by the Supreme Court of this state in *Abbey Land & Improvement Co. et al. vs. The County of San Mateo et al.*, 167 Cal. 434. There Mr. Justice Shaw said:

'The practice of cremation has been revived in civilized communities in comparatively recent times, and it is advocated mainly on the ground that it is safer for the living, more sanitary, than ordinary burial in a cemetery. (7 Ency. Brit., 11 ed. 403, article on 'Cremation.')

The practice has become general and crematories are now so common in many of the larger cities of the United States that the courts may take judicial notice of the usual method of operation. The corpse is placed in a crucible, entirely closed except the necessary vents for the escape of gases, and there subjected to intense heat, whereby, in a few hours, at most, it is entirely consumed, or reduced to ashes. The

resulting gases are necessarily free from disease germs. * * *

'By means of cremation a human body is reduced in the space of an hour into harmless gases and a small amount of clear white ash.' (Report of Cremation Society of England, 1909, page 7.)

'When all is over nothing remains but a few fragments of calcined bones and delicate white ashes perfectly pure and odorless.' (Augustus G. Cobb in *Earth, Burial and Cremation*, Putman, 1892, page 111.)

From the above it is evident that cremated human remains are no different than are any other ashes or reduced remains, except in so far as the known presence thereof might be distasteful to and affect the peace of mind or tranquility of living members of society.

There is no section of the Health and Safety Code which directly prohibits the deposit, disposal, or scattering of cremated human remains in unincorporated areas or in the sea.

Section 7054 of said code, however, reads as follows:

'Every person who deposits or disposes of human remains, in any place within the corporate limits of any city, or city and county, except in a cemetery, is guilty of a misdemeanor.'

This section has its apparent counterpart in former Penal Code section 297, which was enacted in 1874, and reads as follows:

'Every person who shall bury or inter, or cause to be buried or interred, the dead body of any human being, or any human remains, in any place within the corporate limits of any city or town in this state, or within the corporate limits of the city and county of San Francisco, except in a cemetery, or place of burial now existing under the laws of this state, and in which interments have been made, or that is now or may hereafter be established or organized by the board of supervisors of the county, or city and county, in which such city or town, or city and county is situate, shall be guilty of a misdemeanor.'

When enacted, it referred to dead bodies and not to ashes or cremated remains. It was only of recent years that cremation has been accorded secular countenance. (*Reg. vs. Price*, 12 O. B. 247, 8 Eng. Rul. Cas. 467; *Abbey Land Co. vs. San Mateo Co.*, *supra*; Jackson, *The Law of Cadavers* (1936), p. 68.) In addition, we know of our own knowledge that cremation was not in general use in the year 1874 in California, and hence can not be assumed to have been in the minds of the legislature at the time of the enactment of said section.

We would hence have no trouble construing the expression 'human remains' as used in section 7054 of the Health and Safety Code in the same way as the same expression would be construed in section 297 of the Penal Code, were it not for the fact that section 7001 of the codification provides that 'human remains' include 'cremated remains.'

The Supreme Court has said the legislature is clothed with power in enacting laws to determine what

measures are necessary for the promotion of the general welfare. We must hence conclude section 7054 of the Health and Safety Code was deemed necessary by the latter body. The case entitled *Matter of Miller*, 162 Cal. 687, suggests a legislative determination must not be set aside or disregarded unless it is clearly and palpably wrong and the error appears beyond reasonable doubt from facts or evidence which can not be controverted.

However, our construction must be consistent with other sections of the code permitting the retention of human ashes in temporary receiving vaults and the disposition of ashes in the manner permitted by sections 7055 and 7500 of the Health and Safety Code.

The latter sections impliedly permit the scattering of ashes.

Section 7054 does not prohibit the temporary keeping, within the corporate limits of a city and county, of ashes for eventual disposition, or scattering.

We do not think the legislature intended to grant a privilege in one breath and take it away in the next, nor do we believe such a temporary keeping constitutes that character of depositing or disposing which the legislature had in mind when it adopted Health and Safety Code section 7054.

We must assume the legislature considered such things as the climatic conditions existent throughout this state and elsewhere at various seasons of the year and recognized the impracticability of requiring the immediate and permanent disposition of human ashes.

It is the duty and obligation of this office to adopt constructions which will harmonize enactments with the constitutional limitations upon legislative power (*Wines vs. Garrison*, 190 Cal. 650), and will not result in either absurdities or inconsistencies. (*Carpy vs. Dowdell*, 129 Cal. 244).

So construed, you are advised that ashes or cremated human remains may be obtained by those entitled thereto and temporarily kept for permitted eventual disposition—even though so kept in an incorporated city or city and county.

Your fifth query is one that should properly be referred to the courts rather than be the subject of an opinion by this office. There is a serious question as to whether the permanent deposit of human ashes may be permitted in a crematorium, columbarium or cemetery located within the corporate limits of a city and prohibited elsewhere in the said city. We are informed certain recognized religious groups practice as part of their faith the deposit of their ashes after death in churches, temples and tabernacles. Also, that the denial of such privilege is repellent to their religious views.

It is recommended that a court decision be secured by any interested parties on the last discussed question."

PSITTACOSIS CONTROL

In Southern California 70 shell parrakeet aviaries were inspected and 230 interstate shipments were checked and approved. These shipments involved 3242 shell parrakeets and 310 larger psittacine birds.

TUBERCULOSIS SURVEY OF FILIPINOS

A radiographic tuberculosis case-finding survey in Filipino labor camps of Monterey County was completed during December. A total of 805 individuals was X-rayed in 37 camps. These consisted of 743 Filipinos, 37 Mexicans, 19 whites and 6 negroes. Distribution by age groups was as follows:

15-19-----	11
20-24-----	42
25-29-----	178
30-34-----	199
35-39-----	183
40-up-----	173
Unknown-----	19

CLINICS WELL ATTENDED

During November, 1939, there were 77,741 venereal disease clinic visits recorded in California. Totals of 46,748 treatments for syphilis and 18,276 treatments for gonorrhea were recorded. During November, 1218 new cases of syphilis and 966 cases of gonorrhea were received in clinics. A new clinic at Grass Valley was opened during the month. In the state laboratory during December of 1939, 12,358 Kline tests, 2960 Wasserman tests, 2319 Kahn tests were performed. Examinations were made of 347 gonococcus smears.

FISH CANNING ODORS INVESTIGATED

At the request of local officials and because of many complaints, investigations were made by the Bureau of Sanitary Inspections into conditions at twenty fish-handling plants in Contra Costa and Marin counties, as well as in San Francisco. Measures are being adopted to improve conditions in these plants so as to eliminate the possibility of fish-canning odors. At the same time, investigations were made into conditions in three shrimp-handling plants in Marin County.

WINERIES INSPECTED

During December wineries in the San Joaquin Valley were inspected by the Bureau of Food and Drug Inspection. Records of various tanks of vintage wine at wineries were checked. Wineries are now in the position to provide well-aged wines, palatable and of good quality. There is an increased demand for vintage wines, of which approximately 500,000 gallons were given vintage approval before the holiday season. More vintage wine is now being bottled than heretofore. It is important that such bottling be done by the producing winery only, in order that proper control may be established.

MORBIDITY

Complete Reports for Following Diseases for Week Ending
January 20, 1940

Chickenpox

601 cases: Alameda County 6, Albany 6, Berkeley 15, Oakland 23, San Leandro 1, Butte County 1, Colusa County 1, Contra Costa County 1, El Cerrito 2, Pittsburg 2, Fresno County 4, Fresno 3, Kern County 21, Bakersfield 8, Delano 2, Los Angeles County 40, Alhambra 4, Burbank 5, Claremont 1, Compton 2, El Monte 1, Glendale 5, Huntington Park 1, La Verne 1, Long Beach 19, Los Angeles 82, Montebello 2, Pasadena 1, Pomona 2, San Fernando 3, Santa Monica 1, South Pasadena 1, Torrance 1, Lynwood 16, South Gate 2, Madera 4, Marin County 1, Modoc County 1, Mono County 1, Monterey County 5, Carmel 10, King City 4, Monterey 11, Salinas 4, Orange County 25, Fullerton 1, Newport Beach 2, Santa Ana 8, Seal Beach 1, San Clemente 1, Riverside County 6, Corona 1, Riverside 18, Indio 2, Sacramento 6, San Bernardino County 4, San Diego County 4, Oceanside 1, San Diego 17, San Francisco 51, San Joaquin County 10, Stockton 16, San Luis Obispo County 1, San Luis Obispo 4, San Mateo County 1, Daly City 5, Redwood City 4, San Mateo 1, San Carlos 1, Santa Barbara County 4, Santa Barbara 2, Santa Clara County 2, Mountain View 1, Palo Alto 3, San Jose 19, Santa Cruz County 1, Santa Cruz 9, Watsonville 7, Siskiyou County 1, Yreka 1, Solano County 2, Turlock 4, Sutter County 4, Red Bluff 2, Tulare County 9, Dinuba 1, Tulare 1, Ventura County 1, Santa Paula 1, Ventura 1, Ojai 1, Yolo County 3, Winters 2, Marysville 1.

Diphtheria

11 cases: Oakland 1, Glenn County 1, Los Angeles County 2, Sacramento 2, Colton 1, San Diego 1, San Jose 1, Dinuba 2.

German Measles

39 cases: Berkeley 7, Oakland 2, Fresno County 1, Los Angeles County 2, Long Beach 3, Los Angeles 5, Pasadena 3, Santa Ana 2, Ontario 1, San Diego 2, San Francisco 1, Lompoc 1, Siskiyou County 7, Yreka 1, Ventura County 1.

Influenza

297 cases: Oakland 1, Butte County 2, Contra Costa County 1, Kern County 8, Bakersfield 2, Taft 1, Los Angeles County 25, Alhambra 1, Burbank 1, El Monte 7, Glendale 4, Long Beach 4, Los Angeles 66, Pasadena 1, Santa Monica 1, South Pasadena 4, Whittier 1, Lynwood 1, Los Banos 36, Orange County 7, Anaheim 2, Santa Ana 7, Tustin 2, Riverside County 45, Riverside 2, Sacramento County 1, San Bernardino 2, San Francisco 3, Manteca 1, San Jose 1, Corning 5, Yuba County 52.

Malaria

One case: Yuba County.

Measles

353 cases: Alameda County 1, Berkeley 1, Hayward 1, Oakland 2, Butte County 2, Contra Costa County 1, Fresno County 1, Imperial County 1, Kern County 15, Bakersfield 1, Delano 1, Los Angeles County 6, Glendale 2, Los Angeles 15, San Fernando 4, Torrance 3, Modoc County 13, Huntington Beach 2, Santa Ana 16, Sacramento 3, Redlands 1, San Diego County 17, Chula Vista 3, Coronado 1, El Cajon 1, Escondido 1, La Mesa 2, National City 53, San Diego 119, San Francisco 3, San Joaquin County 5, Lodi 1, Stockton 1, San Luis Obispo 1, Watsonville 1, Siskiyou County 5, Yreka 17, Tulare County 3, Tulare 9, Yolo County 8, Winters 1, Woodland 8, Marysville 1.

Mumps

273 cases: Alameda County 5, Albany 1, Berkeley 9, Oakland 3, Butte County 1, Fresno County 4, Coalinga 1, Fresno 3, Sanger 1, Selma 1, Kern County 13, Bakersfield 8, Taft 1, Los Angeles County 8, Burbank 1, Compton 1, Glendale 2, Long Beach 11, Los Angeles 15, Montebello 3, Pasadena 4, San Fernando 1, Santa Monica 1, South Gate 1, Gardena 3, Monterey County 2, Orange County 2, Anaheim 4, Brea 1, Fullerton 2, Orange 2, Santa Ana 1, Banning 1, Corona 2, Riverside 2, Sacramento 2, Chula Vista 1, San Diego 2, San Francisco 23, San Joaquin County 40, Manteca 2, Stockton 15, San Luis Obispo County 11, Redwood City 1, San Mateo 2, Menlo Park 2, Santa Barbara County 2, Santa Maria 2, Santa Clara County 3, Palo Alto 11, San Jose 1, Santa Cruz County 1, Siskiyou County 5, Fort Jones 1, Montague 1, Yreka 6, Solano County 1, Vacaville 1, Tulare County 2, Dinuba 1, Lindsay 1, Davis 10, Yuba County 1, Marysville 1.

Pneumonia (Lobar)

92 cases: Alameda County 1, Albany 1, Berkeley 4, Oakland 6, San Leandro 1, Contra Costa County 1, El Cerrito 1, Pinole 1, Fresno County 5, Fresno 2, Selma 1, Imperial County 1, Kern County 1, Los Angeles County 1, Alhambra 2, Beverly Hills 2, Compton 1, Culver City 1, Glendale 2, Huntington Park 1, Los Angeles 29, San Gabriel 1, Orange County 4, Santa Ana 1, Placentia 1, Sacramento County 1, Sacramento 1, San Bernardino County 1, Ontario 1, San Diego 2, San Francisco 2, San Joaquin County 2, Manteca 1, Stockton 2, San Mateo County 1, Santa Cruz 1, Dinuba 1, Yuba County 3, Marysville 1.

Scarlet Fever

160 cases: Berkeley 2, Oakland 4, Butte County 1, Colusa County 1, Fresno County 4, Glenn County 2, Humboldt County 2, Imperial County 1, Kern County 4, Los Angeles County 21, Alhambra 1, Compton 2, Glendale 1, Hermosa 1, Inglewood 1, Long Beach 7, Los Angeles 19, Montebello 1, Santa Monica 1, Whittier 2, South Gate 4, Signal Hill 1, Fort Bragg 1, Salinas 1, Orange County 2, Anaheim 1, Riverside County 1, Beaumont 1, Corona 5, Riverside 1, San Bernardino County 2, Redlands 2, San Bernardino 1, San Diego County 1, San Diego 3, San Francisco 8, San Joaquin County 6, Stockton 1, San Luis Obispo 2, San Mateo County 1, Daly City 1, Redwood City 1, Santa Clara County 2, San Jose 4, Santa Cruz 1, Siskiyou County 1, Solano County 1, Sonoma County 2, Santa Rosa 1, Sutter County 2, Corning 1, Tulare County 1, Exeter 1, Visalia 1, Ventura County 4, Ventura 5, Yolo County 2, Yuba County 6.

Smallpox

12 cases: Humboldt County 1, Sutter County 8, Tulare County 3.

Typhoid Fever

5 cases: San Francisco 3, San Joaquin County 1, Tulare County 1.

Whooping Cough

173 cases: Oakland 1, Fresno County 1, Kern County 7, Bakersfield 9, Los Angeles County 31, Long Beach 3, Los Angeles 14, Santa Monica 6, Whittier 21, Merced 1, Anaheim 3, Fullerton 1, La Habra 1, Riverside County 2, Riverside 4, San Jacinto 3, Indio 3, Sacramento County 1, Sacramento 1, San Diego County 3, San Diego 1, San Francisco 8, Daly City 2, San Bruno 2, South San Francisco 1, Atherton 1, Menlo Park 1, Santa Barbara County 3, Santa Clara County 8, Palo Alto 6, San Jose 8, Santa Clara 6, Sonoma County 2, Tulare County 2, Lindsay 5, Ventura County 1.

Meningitis (Epidemic)

3 cases: Whittier 1, Sacramento 1, San Diego 1.

Dysentery (Amoebic)

One case: Los Angeles.

Dysentery (Bacillary)

18 cases: Los Angeles County 4, Burbank 1, Los Angeles 5, San Francisco 4, Sonoma County 4.

Poliomyelitis

One case: San Francisco.

Pollomyelitis

7 cases: Alameda County 1, Fresno County 1, Fresno 1, Glendale 1, Los Angeles 1, Orange County 1, San Joaquin County 1.

Dengue

One case: Solano County.

Encephalitis (Epidemic)

2 cases: Monterey County 1, San Francisco 1.

Trichinosis

One case: Stockton.

Jaundice (Epidemic)

6 cases: Reedley 5, San Joaquin County 1.

Food Poisoning

7 cases: San Francisco 6, Stockton 1.

Undulant Fever

7 cases: Reedley 1, Brawley 1, Los Angeles 3, Marin County 1, Ventura County 1.

Coccidioides Granuloma

One case: Los Angeles County.

Epilepsy

52 cases: Fresno County 1, Los Angeles County 5, Huntington Park 1, Los Angeles 32, Pasadena 1, Redlands 1, San Bernardino 1, San Francisco 8, Santa Cruz County 1, Sonoma County 1.

Rabies (Animal)

7 cases: Fresno County 1, Los Angeles County 1, Inglewood 1, Orange County 1, San Diego 1, Santa Clara County 2.

* Cases charged to "California" represent patients ill before entering the state or those who contracted their illness traveling about the state throughout the incubation period of the disease. These cases are not chargeable to any one locality.